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RUSSIAN CIVIL LAW.

MICHAEL—PETER THE GREAT.

PART III.*

Upon the death of Feodore (1598) the signs of an impending débâcle were so positive that few men had any hope for the future unity of Russia. Indeed, had not the Christian faith been so embedded among all classes it is probable that all the heroic deeds for national cohesion would have gone for naught. In the désarroie following the realization that the House of Rurik was ended the people first looked to the Patriarch Job for guidance until the question of succession could be settled. There were also the traditional patriarchal characteristics of autocratic government to be considered in dealing with the masses. The chief of a great family had passed away and no *elder* survived to assume the headship. The Catholics of Poland menaced on the west, Islam pressed on the east, Orthodox Russia had strife within her own tent, wept and would not be comforted.

Thus was inaugurated the fifteen years of Russian history known as the "Period of Troubles" (*smutnoye vremya*), marked by the convulsions incident to the extinction of an old régime of absolutism, ignorance, and superstition and the birth of a new, enlightened, and progressive dynasty. Law, order, and political rights gained little affirmatively during this period but profited much negatively by the destruction of theories that had become impracticable and oppressive.

It is significant in its radicalism that the man selected to succeed Feodore was Boris Godunov (1598–1605), of Tartar descent. It was inevitable, however, that he should not found a Russian dynasty and that he should be tormented by his past cruelty in the form of a false pretender who

* For Parts I and II, see numbers of the AMERICAN LAW REGISTER for March and April, 1904.

claimed to be that second son of Ivan IV, Dmitri, victim of a foul murder during the regency of Boris, for which history holds him accountable. The attachment of the people to the ancient Rurik line probably explains the readiness with which the False Dmitri was accepted after the death of Boris and the rejection of the latter's son. At any rate, it was a further manifestation of the unsettled condition of governmental affairs, as were also the subsequent factional choice of Vassili Shuiski, the temporary domination of other princes, the dallying with Sweden, and the partial acceptance of the Polish union. Nor were the nation's tribulations by any means all political. Famine desolated the country and demoralized all classes. The plague appeared and decimated vast districts. Orthodoxy itself could no longer be relied on. Each successful partisan elevated a new Patriarch and the clergy submerged discipline in the sea of political intrigue. The starving and plague-stricken serfs deserted their impoverished masters and inaugurated a brigandage that spread throughout the country—even to the very gates of Moscow. Other pretenders—always with the name of Dmitri—launched their political barks on the surging main of Russian desolation and misfortune, to meet the same disasters as their predecessor. The Poles by crafty statesmanship and specious argument progressed so far as to get possession of Moscow and to obtain the sanction of the noblesse for uniting the warring Russian units and Poland under Ladislaus, son of King Sigismund III. National unity was suspended. The titular Tzar, Shuiski, was a prisoner in Poland, the rightful Patriarch, Hermogen, was also a captive, the Swedes were at Novgorod, rival princes held other cities, the Poles were in the Kremlin, and the high nobility of Moscow were in the pay of Sigismund. Everywhere marauding bands pillaged the cities, tortured the inhabitants of the country districts, and desecrated the churches. The crisis was reached. “Ce pays habitué à être gouverné autocratiquement n'avait plus de gouvernement.”¹

The clergy sounded the slogan: Orthodoxy was in danger; the Kremlin was being profaned by the impious wor-

¹ Rambaud—*Histoire de la Russie*.

ship of Polish Catholics. The monks of the *Troïtsa* (Trinity), the monastic holy of holies of Great Russia, supported by its fabulous wealth and its two hundred and fifty years of history and religious prestige, sent to all the large cities highly impassioned letters to be read before the assembled people calling upon them to save Russia. The warmth of the patriotic flame that swept the country is emphasized in the combined leadership of Minin, the butcher of Nijni Novgorod, and Prince Pojarsky of the haute noblesse of Starodub. This rise of the people of all classes resulted in the Poles being driven from the country (1612) and the comparative restoration of national cohesion and order. Thus were the loins of the great Slavonic nation strained in giving birth to the new Russia.

After freeing the country from foreign foes and establishing firm control of internal malcontents the awakened people at once prepared to establish a stable government by the general voice.

The writs commanding the selection of delegates to the "General Council of the Land" (*Zemski Sobor*) emanated from Pojarsky as head of the army. It appears from such as are still preserved that representatives to the number of "two or three" were sent from each of the estates, or national classes, as follows: the superior clergy, the higher nobility, the lower clergy, the lower nobility (ministerial or knightly class), the three Guilds of Moscovite merchants, the citizens of different urban districts, and the rural and village peasants of the State lands called the "black hundreds."

The writs were directed to the *voivodes* (provincial governors) and to the *goubnii starosti* (district chiefs), who assembled the different classes and reported the results of the respective elections. The place of meeting of this great Sobor according to the writs was Yaroslav, but, following the army, the real assembly took place at Moscow, "where it sat in common with the boyars of the council, the high commission of the clergy (*Osviaschenni Sobor*), and the representatives of the regular and irregular military forces, that is, the Streltzi and the Cossacks." ²

² Kovalevsky—*Modern Customs and Ancient Laws of Russia*.

This was the assembly that on February 21, 1613, elected as Tzar of Russia the fifteen-year-old boy, Michael Feodorovich Romanov (1613-1645), founder of the existing dynasty.

The Slavophiles point with pride and, indeed, with truth, to the many ancient Slavonic elements involved in this National Assembly and its work. It was certainly a revival of the long-neglected choice of a ruler by popular election so distinctly elemental among the early Slavs. It is true that Boris Godunov, Vassili Shuiski, and even Ladislaus the Pole, had received the sanction of assemblies, but in no wise could they be claimed to have represented the "voice of the land" (*Zemskii prigovor*). This Sobor, however, seems to have been the most truly representative body that united Russia has ever had.

The determination to select only a Russian was manifested by the adoption of a law at the outset that no foreign prince should be considered eligible. Slavonic tradition probably had also much to do with the selection of Michael. As the great nephew of Anastasia Romanov, one of the wives of Ivan the Terrible, he was connected with the Rurik line. His father, Feodore Romanov, better known by his religious name of Philaret, had been forced to become a monk by Boris, who feared his popularity. His mother had retired to a cloister. He thus appeared with a small family following, and as the new sovereign he would therefore have to distribute but few beneficiary donations of crown lands. The favor of the boyars doubtless resulted from the hope that his youth and the absence of Philaret as a prisoner of the Poles would make control easy. This last supposition is supported by the fact that Michael became Tzar on definite terms imposed by the Sobor amounting to a Charter of Privileges to the nobility. Some writers deny any condition or limitation, but the weight of authority is affirmative. Gregory Kotoschichin, the Russian refugee in Sweden, who wrote *Russia Under the Reign of Alexis Michaelovitch* (1666), leaves no doubt of limitations having been imposed on Michael. Fokkerodt, the Swedish historian, is also authority to the same effect. Stralenberg.

author of *Historisch-Geographische Beschreibung der Nördl. und Oest. Theile von Europa und Asien*, published at Stockholm in 1703, gives the exact conditions upon which Michael was elected, as follows: (1) to uphold Russian Orthodoxy; (2) to forget and forgive all past injuries to his family; (3) to make no new laws, alter no old ones, nor initiate any important measure that might abrogate existing laws or suspend the legal proceedings of the courts of justice, and (4) to begin no wars, make no treaties of peace, levy no taxes. All of the powers thus taken from him were to be vested in the country as represented by the *Zemski Sobor*.

The resemblance of these constitutional limitations to those established by the Magna Charta and the statute of Edward the First, *de tallagio non concedendo*, will at once be noted by the English common law student. The comparative subsequent force of those principles in the two countries presents an interesting study.

That the Sobor was in quasi-permanent session at Moscow during the whole reign of Michael is unquestionable, as likewise its active participation in the government. Public acts contained this formula: "According to our order (*ukase*) and the decision of the whole land (*po vsei Zemskii prigovor*)."

The real strength of the first Romanov appeared when his father, Philaret, was released by the fourteen years' armistice with the Poles and was appointed Patriarch upon the nomination of the Sobor (1618). Father and son joined in the great work of re-establishing the security of the State and the supremacy of the Orthodox faith. State and Church had never been so actually and officially united. In the public acts the Tzar and the Patriarch were equally styled "*Veliki Gosudar*" (Great Lord) and all orders were declared as resulting from their mutual decision. "The fact is, that the rising of 1612, which ended in the withdrawal of the Poles from Moscow and the elevation of a genuine Russian to the throne, took place as much in favor of Orthodoxy as in favor of upholding national independence." ³

³ Kovalevsky—*Russian Political Institutions*.

In the thirty-two years that Michael reigned so intent were he and his father on firmly fixing the political and religious bases of his empire that little attention was paid to the general civic condition of the masses. During the "Period of Troubles" martial law had practically existed throughout the country except in the early days of Boris and during the short supremacy of Shuiski. So far as possible the customary law, which had always been allowed full sway outside of cities, continued its force through the local self-government instruments, the ancient *mir* and the *volost*. Indeed, it will be recalled that the substantive law of the village commune had rarely been interfered with. Even the radical reforms of Ivan IV and his *Sudebnik* went no farther than to give new names and new officers to the rural courts in which the rights of sixty per centum of the Russian people were enforced. The great body of laws touching almost every phase of rights of property and of family which were from ancient times administered through the *mir* and the *volostnoi sud*, or peasants' court, and but little of which ever assumed written form, were too firmly fixed to be uprooted. Those laws were as much a part of the soil as those stolid *paysans* among whom they represented absolute and complete justice. No legislator had been bold enough to abrogate them or abolish the system of their administration and but few had dared to attempt any material modifications. The growth of bondage and its final concrete recognition left the lower classes generally even more ignored in statutory civil laws, thereby permitting the development of what might have become the common law of Russia had not class distinction existed.⁴

During the general national disturbance following the death of Feodore so far as the administration of civil law was possible as to the superior classes there had been a general adherence to the system inaugurated by Ivan IV and to the principles of his *Sudebnik*. This continued while Michael was repairing the country's material and moral in-

⁴ *The Private Customary Law in Russia—Obychnoe grajdanskoie pravo v Rossii*—Professor Pahman.

juries and preparing for the future great deeds of his dynasty. His task was difficult even with the aid of his astute father and the complacency of the Sobor.

Notwithstanding the urgent necessity of many new ideas which he sought to introduce and nurture he soon discovered that the Slavonic hatred of Roman Catholicism, the Tartar antagonism to Western institutions, and the general fear of contact with Protestantism were elements he could not ignore. He was obliged to recognize that he was the ruler of a people whose faces ever turned towards the Orient. Although he encouraged foreign diplomatic and commercial intercourse and invited scholars, artists, and mechanics to come to Russia, he did so in the face of distinct popular disapprobation, which at times became open revolt.

While Michael did not fulfil his outlined measures he did much to prepare the way for rulers who were to follow him. That he did give some attention to the general betterment of the people is shown by the academy which Philaret founded at Moscow for the study of Latin and Greek and the approval given Dionisius, prior of the Troitsa Monastery, in his work of correcting the Slavonic text of sacred books. Another measure of great moment was the preparation of the "Land Register." He sent commissioners with experts into every province to "inscribe with the greatest exactness on registers specially prepared for that purpose the divers properties, urban as well as rural, having care to note the sum of their products and the number of their occupants."

Michael was not long on the throne before he felt the intrigues of the several factions of the nobility, whose influences gradually became apparent and troublesome in the sessions of the Sobor. It was the old struggle among the boyars for favor and control. He was obliged to tighten his grasp on state affairs through a strong *Douma*, or Council of State, composed of his most faithful adherents, who discouraged and gradually eliminated all serious activity within the Sobor. From the time of his election that body had been theoretically in constant session although gradually less often in actual deliberation. From 1622 continuous existence of the Sobor was ignored and a new one was summoned only

when some especially important questions of state were required to be settled. In 1632 a Sobor was assembled to give its consent to a general tax for the war with Poland. In 1636 and 1642 new assemblies were summoned for tax and war questions concerning the Tartars and the Crimea. No other Sobor was called by Michael, and the records show that no measure pertaining to internal administration or the civil relations of the people was ever considered by the "voice of the land."

Michael died in 1645 and was succeeded by his son Alexis (1645-1676), then thirty years old. Although his coronation was confirmed by the Sobor, assembled for that purpose, he became Tzar without entering into any covenant with his people. Prompted by his former tutor, the learned, shrewd, and bold Morozov, and aided by his own observations during his father's reign, he assumed absolute power in 1648, when a pretext was offered by the insurrections of Moscow, Novgorod, and Pskov. With a *Douma* of his own selection and the re-establishment of the *prikazi*, or ministerial sections, made familiar by Ivan IV, he showed his hand of real autocrat. Being by education more European than Asiatic, he courageously determined upon reforms which embraced many western ideas. Harkening to the complaints rampant against the venal administration of justice and the imperfect condition of the laws, he caused to be prepared his famous General Code of Laws (*Sobornogie Ulozhenie Zaconn*), which is considered the starting-point of modern Russian law, all prior general legislation being termed "ancient law."

The work was intrusted to Princes Odoievski and Volkonski, known for their scholarly ability, and to Ordine Nachtchokin, one of the ablest private councillors of the Tzar. They achieved the distinction of preparing a body of laws in the shortest time known to history. Begun on July 16, 1649, the Code was completed and submitted to the Sobor assembled for the special purpose of considering it on October 30 following. The manuscript, in one long roll, is still preserved in the historical section of the Treasury at Moscow and contains the signatures of the Patriarch Jo-

seph, many archbishops, and three thousand boyars or most distinguished citizens of the empire. Another roll accompanies the original manuscript and contains the corrections made in the revision. From these two rolls the Code was at first transcribed in a book and subsequently printed in Slavonic characters. There were three distinct editions, all bearing the date of 1649. Thirteen editions in modern Russian have been published, but they all show material errors of orthography and omissions in text.

The Code is composed of nine hundred and sixty-eight articles, divided into twenty-five chapters whose titles are as follows:

- I. Of Sacrilege and Religious Revolts.
- II. Of the Honors Due the Sovereign.
- III. Of the Tzar's Household.
- IV. Of Forgeries and Counterfeits.
- V. Of Jewellers, Gold Workers, and Coiners.
- VI. Of Passports.
- VII. Of the Military Service.
- VIII. Of the Redemption of Prisoners.
- IX. Of the Levy of City and Frontier Duties.
- X. Of Legal Procedure.
- XI. Of the Trial of Peasants.
- XII. Of the Manner of Trial of those Attached to the Service of the Patriarchs.
- XIII. Of the Prelates and Persons belonging to Cloisters.
- XIV. Of the Oath.
- XV. Of Trials—Of the Prohibition Against Renewal of a Cause Once Decided.
- XVI. Of Real Property.
- XVII. Of Inheritances—Family Property.
- XVIII. Of Land Taxes.
- XIX. Of Rural Inhabitants.
- XX. Of the Trial of Slaves.
- XXI. Of Brigandage and Robbery.
- XXII. Enumeration of Crimes Punishable with Death.
- XXIII. Of the Streltzi (feudal militia).

XXIV. Of the Cossack Chiefs (hetmans).

XXV. Of Cabarets (taverns) and the Sale of Strong Liquors.

The sources of this work present a curious fusion of legal systems and legislative experiments:

(1) The former civil codes,—*Russkaia Pravda* of Yaroslav, *Ulozhenie Zaconn* of Ivan III, *Sudebnik* of Ivan IV.

(2) The *Nomocanons* of the Russian Church, particularly that section known as the *Kormtchaia Kniga* (Guide Book) as reformed and supplemented under Ivan III, being principally extracts from the laws of Rome and Byzantium between the fourth and fourteenth centuries.

(3) The Lithuanian Statute of 1588 and the Codes of Masovia of 1531 and 1540.

The ancient Russian codes supplied the bases for administrative measures, but only in the sense of suggestion. The traces are discernible by historical comparison rather than by any material adoption in terms.

The ecclesiastical law was drawn upon mainly for the criminal provisions, and in the cruel and disproportionate punishments can be discerned the Oriental characteristics and development of the Russian Church.

The Lithuanian statute and the Masovian codes represented the most advanced elements. They were founded upon the customary laws of Slavonic peoples, largely Orthodox in faith, who had struggled to maintain a national identity between Catholic Poland and autocratic Russia. This contest at last was lost and Masovia became united with Poland, which also became the victor of the greater part of Lithuania, but in the part that fell to Russia the ancient Slavonic institutions so aptly preserved in the enactments mentioned were given distinct recognition and had much influence upon Russian laws generally. They were accepted as the best written expressions of the customary law and institutions of ancient Russia and were largely used in the new *Ulozhenie*. Indeed, there were many indications that the law-makers intended to bring about accord between the divers local shades of the customary law by the use of legislative terms capable of some elasticity of construction. This

was desirable because Moscow had always differed much from other sections, particularly the west, where the pure Slavonic traits had been less affected by the Tartar invasion.⁵ This effort to meet certain inconvenient local differences is made more conspicuous by the accepted understanding that the *Ulozhenie* did not cover the whole field of civil, criminal, or even administrative law, which explains why it failed to constitute any definite theory or system for regulating all civil relations.

It left practically undisturbed that great field of the customary law which without law-book or lawyer was being daily enforced and accepted by the rural masses, and likewise by silence confirmed the broad ecclesiastical jurisdiction over secular matters touching all classes.

There had been no material change in the powers of the clergy since the time of Ivan IV and his *Stoglav*, or "Book of the Hundred Chapters," except the recognition of the Patriarch as a more intimate adjunct of the crown, announced by Michael. The Orthodox corporation had remained intact throughout the "Period of Troubles" and still exercised exclusive jurisdiction in punishing some crimes and in matters concerning wills, inheritances, guardian and ward, husband and wife, etc. From the ninth century the secular branch of the Church had relied upon the *Novels* of Justinian as glossed by John the Scholastic, the *Ecloga* of Leo the Isaurian, and the *Prochiron* of Basil the Macedonian. Those works were in excerpt form, and by the Slavonic title of *Kormtchaia Kniga* were the accepted sources of all law necessary for the determination of civil litigation. An instance may not be uninteresting:

In 1656, on the demand of the widow Marfitza, who complained of unjustly having been made to pay her deceased husband's debts, the Patriarch Nikon through the tribunal of Novgorod ordered *that by virtue of the Ecloga of the Emperor Leo* the widow was entitled to have not only her marriage portion, or dot (*pridanoe*), but also in addition

⁵ *History of the Sources of Lithuanian Law—Istochniki russko-litovskago prava*—Professor Leontovitch, Warsaw, 1894.

thereto the one-fourth of the property possessed by the husband at the time of his death.⁶

Particular mention is made of these elements of Romano-Byzantine law because this reign marked the greatest height of its recognition. Had the utilitarian and temporary spirit not distinguished all Russian legislation a scientific revival of the Roman law such as western Europe witnessed might have become possible. It was destined, however, only to supply theories for the punishment of crimes and makeshift precedents for predetermined decisions in civil causes. Its force, as will be seen, was soon to be weakened and its identity almost obliterated.⁷

Alexis subsequently on the advice of his *Douma* promulgated sundry laws to supplement the *Ulozhenie*, viz.: the Military Code, the Maritime Code, the Code of Commerce and Regulations of the Land Registry, all quite imperfect, however, and so inadequate for the progress of national affairs as to become of little aid in subsequent law-making. He also by *ukase* added sundry criminal laws to the provisions contained in the Code under the title of *Novokaznie Stati* (New Dispositions). These were largely borrowed from the ecclesiastical laws. Finally it was decreed that criminal causes should be adjudged according to the *Ulozhenie*, the *Novokaznie*, and the *Gradski Zaconn* (collection of civil laws). The last named was the *Prochiron* of Basil the Macedonian as adopted by the clergy.

Notwithstanding the promotion of foreign relations, the favorable reception of western ideas, the efforts to simplify the laws and to equitably distribute the burden of taxation whereby Alexis secured the title of "Father of Modern Russia," he did little to ameliorate the hard lot of the great bulk of his people. He called no Sobor after 1653 and he did not always consult even the *Douma*. His autocratic arrogance was rendered more evident by the great schism in the Russian Church caused by the revision of the ancient texts of the

⁶ *Complete Collection of Laws—Polnoe Sobranie Zaconov*, I, No. 210, p. 447.

⁷ Romuald de Hubé—*Droit Romain et Gréco-Byzantin chez les peuples slaves*.

Slavonic Bible and mass books. Although the Patriarch Nikon assumed the responsibility for that reform, the lower classes blamed the Tzar for the decree of May 13, 1667, excommunicating all who refused to accept the new versions. "Pour ce peuple, demeuré à demi païen sous l'enveloppe chrétienne, les invocations religieuses étaient comme des formules magiques dont la moindre altération eût détruit la vertu."⁸ The *raskolniki* (Old Believers, Dissenters, Protestants) received a serious shock in their devotion to the Tzar as the infallible dual head of Church and State, the protector of the ancient faith. "The struggle against the reforms of Nikon was a protest against authority in both Church and State. The Old Believers, while strenuously taking their stand in defence of points of ritual, showed all through the dispute a more or less vague consciousness of the political character of the struggle."⁹ Not only did Alexis himself realize the consequent diminution in popular support,—which he manifested by creating a Secret Tribunal to deal speedily with those accused of crimes against the State,—but subsequent Tzars have had much cause to lament the day when the whole people ceased to call the empire "Holy Russia."

Alexis died in 1676 and was succeeded by his son Feodore (1676–1682), a lad of nineteen years. He left no enduring impression upon the civil laws. There were two hundred and ninety-one manifestations of his autocratic will in the form of statutes, edicts, regulations, instructions, etc., but they were in no sense fundamental, and, indeed, as to such as were intended to supplement the *Ulozhenie* but emphasized the futility of attempting to establish any system of jurisprudence, while each Tzar could disregard the acts of his predecessors.

Notwithstanding the otherwise mediocre reign of Feodore one event stands out as the momentous act which completed the Romanov preparation for the master hand about to arouse the people from their Asiatic lethargy and "knout"

⁸ A. Leroy-Beaulieu—*L'Empire des Tsars*, t. III, p. 330, Paris, 1898.

⁹ Edmund Noble—*The Russian Revolt*. . .

them into a realization of their possibilities and their destiny. This was his settlement of the quarrels of precedence (*mes-nichestvo*) which had troubled the government for centuries and which were constantly becoming aggravated. In the army, in the immediate crown offices, and in the civil service generally the distinction of birth had always given a son of illustrious ancestry advantages over one whom fortune had favored less. Beyond this, even among the nobility of equal rank, one whose ancestor had served in a certain capacity would not serve under or in the same class as one whose ancestor had not enjoyed an equal dignity. It thus often happened that a young man whose only claim to rank rested upon the official grade of some remote ancestor had the right to command experienced officials, whose hair had whitened in the service, simply because the latter's ancestors had occupied less dignified positions. To such an extent was this ancestral prestige carried that at Court, at fêtes, ceremonies, and even private repasts annoying complications were constantly arising. A special class arose within the noblesse known as the "Men of Genealogy" (*Rodoslavie Liudi*), and a branch of the *Douma* had the mission of settling their disputes. In course of time the registers of the dignities had grown into definite records known as the "Books of Rank" (*Rosriadnie Knigi*), which were possessed by the illustrious families. They were consulted on the most unimportant occasions to support asserted prerogatives of precedence. There were even severe penalties, such as the knout and imprisonment, provided for attempted evasions. Notwithstanding the serious inconvenience to government no Tzar had been bold enough to attempt a reform so intimately connected with the most powerful families of the empire. By the advice of Vassili Galitsin, one of the ablest statesmen of that century, the nobles were requested to submit their titles and registers pertaining to the *rozriad* to a commission charged with reorganizing the army. Upon the petition of the army commission and a special council of the high clergy and some boyars of the *Douma* called to consider the question Feodore ordered the records to be burned. This was done on January 12, 1682, in the presence of the high digni-

taries of the Court, the principal officers of the army, and the high clergy. Henceforth the nobility was to be but one class in the empire and the sovereign would be free to choose his ministers and officers according to the best interests of the country and incidentally to suit his own purposes. It was but another step towards centralization and absolutism, already adumbrated by the enforced religious reforms and the passing of the Sobors. It had taken but seventy years for the Magna Charta of the first Romanov to be forgotten and the country to be prepared for the coming great reformer who was destined to make of Russia a European State.

Within a few weeks after the burning of the "Books of Rank" Feodore died, and on April 27, 1682, Peter, the son of Alexis by his second wife, Natalie Narishkin, of Scotch blood and the first woman to brave the traditions of the *terem* by appearing in public without the ancient *fata*, or veil, was proclaimed Tzar at ten years of age. While he did not continue sovereign under this proclamation, he was maturing for his great work during the struggle for supremacy between his mother on his behalf and his half-sister Sophia on behalf of his half-brother Ivan. Nor was he ready for action until both he and Ivan had been joint rulers for seven years with Sophia as regent. Then, in 1689, at seventeen years of age, he manifested that force which ended the regency, made Ivan a joint sovereign in name only during the remaining seven years of his life, and opened the modern era of Russian history which he was to adorn as "Peter the Great."

The waves of western civilization, which since the advent of the Romanovs had irregularly beaten against the citadel of Slavonic tradition, only to subside impotently, now broke in one harmonious billow upon all Russian institutions. The long contact with Poland and Sweden, and the growing influence of the long-established German colony in Moscow, found concentrated expression in the monarch who was bold enough to add "Emperor" to his other titles and fill in the old cadre of autocratic government with European culture. "Constructively, and within the immediate limits of his

activity, the reformer did more to strengthen the foundations of despotism in Russia, perhaps, than any other member of the Romanov family. Unconsciously and prospectively, he struck despotism a blow from which it was destined never to recover.”¹⁰

Both these conclusions became true by the original scope and natural evolution of the western ideas that soon permeated the empire. They were really intended to establish the autocracy more firmly, but by becoming too widespread and deeply rooted they made a similar personal despotism forever impossible. The borrowed conceptions affected the whole social, military, civil, and political fabric of the government. Domestic life was remodelled by the abolition of the *terem*, where woman had been retained in Asiatic seclusion, the adoption of western dress, which was made obligatory, the liberty accorded to affianced to meet and become acquainted before marriage, the *assemblées* where men and women of Russia mingled with erudite and polished foreigners, the unlimited welcome given to foreign literature, the encouragement lent to native writers, and the foundation of libraries, museums, and galleries of painting and sculpture. Not least among these great changes were the abandonment of the Slavonic calendar, whereby time was measured from *anno mundi* with the year beginning in September, in favor of the Julian *anno Domini* notation with January as the initial month, and the adoption of the modern Russian alphabet in which to express the language as then spoken—long before departed from its Slavonic vocabulary and with but great difficulty expressible by the ancient Cyrillic script. The new school system, never before so universal, was also a most important social measure, notwithstanding the exclusion of the peasant class from its benefits.

How radical the imported military reforms were intended to be appeared when Peter by abolishing the *Streltzi* removed the last semblance of the feudal militia and organized a standing army whose efficiency was largely due to the Swiss Lefort, the Scotch Gordon, the Prussian Ostermann,

¹⁰ Edmund Noble—*The Russian Revolt.*

the Saxon Munich—some of the most distinguished among his “eaglets” (*ptentsi*). Never before or since have the Russians been so assisted by foreign military talent, and it can be further said that never since the famous battle of Poltava in 1709, when Peter defeated Charles XII of Sweden, have they ever gained so decisive a victory over any nation of equal arms.

It was by these same soldiers with European accoutrements that Peter extended his domain to the Black Sea (although afterwards relinquished) and secured a Baltic Ocean-way, thereby making possible his cherished wish to give Russia her first navy, which he had the satisfaction of doing.

It is apparent that these departures from ancient landmarks made necessary a reconstruction of the whole administrative system of government, entailing also modifications affecting class privileges, the system of taxation, the Church and the general laws. Peter's aims of subversion of the whole civil and military organization necessarily meant centralization and increased absolutism that had no need of assistance from “the voice of the land.” The Sobor therefore plays no part in his reforms. Nor is this surprising when it is remembered that not long before his time representative government throughout Europe had become annihilated by the rising tide of monarchical power. The English Parliaments had little importance prior to 1640. After 1613 the *Etats Généraux* of France had not been convened. The German *Reichstag* and the *Landstände* of the States composing the “Holy Roman Empire” had become of political insignificance after the treaty of Westphalia (1648), and the *Cortes* of Castile and Aragon as well as the Provincial Assemblies of Hungary and Bohemia no longer spoke for the people. Monarchy, oligarchy, and autocracy were the ensuing results. The Sobors of Russia, therefore, without being abolished, were ignored without comment.

Peter speedily replaced the ancient *Douma* and instituted his private secretariate, called *Blijniaia Kanzeliaria*. He abolished the *prikazi*, or ministerial sections, and installed the collegiate boards, or administrative offices similar to

those of Sweden and Denmark, where they had been adopted in imitation of the numerous *conseils* of Philippe d'Orleans, the French Regent. The colleges were ten in number: foreign affairs, war, admiralty, treasury, revenue, justice, crown lands, manufactures, mines, and commerce. For their guidance the Swedish regulations were translated. Later, finding the burden of receiving reports from the colleges too great, Peter created the "Directing Senate" (*Pravitel'svouyoustchi Senat*), composed of the high state dignitaries and the heads of the collegiate boards. This body was endowed with the powers of general governmental supervision and the functions of a supreme court of justice for the whole empire. To make these first steps permanent and to consistently remove all evidences of feudal tenures he promulgated the "Table of Ranks" (*Tabel o rangakh*), whereby the nobility became subject to governmental service for life and took the place of the ancient class of "men of service" (*slouzhilie liudi*).

The two expressions—"service of the Tzar" and "nobility"—became correlative. The *dvorianin* (nobleman), *stolnik* (personal attendant of the Tzar), and *zhilets* (householder who was subject to call for special military duty) were all embraced in a general order called *schliakhetstvo*. All the servants of the State were divided into sixteen (afterwards reduced to fourteen) classes through which all were obliged to pass, whether in the civil service, the army, the navy, or the Church. Progression was the order, and no one was permitted to occupy an office unless he had served in the grade below or by imperial decree had been placed in a certain grade as a reward for special services rendered. This system became of such consequence that the different grades carried a certain honor apart from the duties performed and laid the base for a new nobility. The attainment of certain ranks was rewarded by a patent of hereditary nobility. The opportunities thus afforded the sovereign to recognize and advance the meritorious and to subordinate birth to capacity were both strong reform auxiliaries. The new class of public officials thus created became recognized as a new order of nobility in which "*la*

noblesse hereditaire" and "*la noblesse de service*" became united under the name of *Tchin* (ceremony, order, rank), which has remained, the subordinate members being styled *Tchinovniki*. These latter compose the official bureaucracy of common execration, having such web-like intricacies that even the sovereign cannot thwart them. The word "*boyar*" thus disappeared from official documents, as all that it had meant in Russian politics passed into history.

As an adjunct to this classification of those who served the State and with a view of promoting commerce and industry inhabitants of cities were divided into three classes. In the first were included bankers, wholesale merchants, physicians, pharmacists, manufacturers, artists, and jewellers. In the second were the retail merchants and master workmen. The third comprised day workers and artisans. The first two classes were given the German name of *guild* and their members invested with the right of corporative identity in groups with certain privileges in local, judicial, and administrative affairs. The members of the lowest were given no definite recognition.

The inhabitants of rural districts were little regarded. They were principally peasants of the Crown, monasteries, and noble landowners. They were counted as so many "*souls*" appurtenant to the land, as the domestic serf was a chattel of the land-owner. There were others who enjoyed a species of freedom, the *odnodvortsi*, much like the early English *villenagium privilegiatum*, and the *polovniki*, or cultivators of land on shares who possessed their personal liberty. Unfortunately, when Peter, following Sweden, changed the system of taxation from community or "*hearth*" (*dvor*) to capitation he obliterated these distinctions by taxing so many heads attached to a fixed place, and increased the seignorial power to assure collection. This practical extension of serfdom was a distinct retrogression, because the question of liberating the serfs had already been discussed in high circles. Galitsin, during the minority of Peter, said to the Polish ambassador Neuville that if Russia was to come abreast of other nations the first step to that end must be the serf's freedom with right

to the land he cultivated. Peter maintained the tax measures, but decreed that domestic serfs should be permitted to enter the army without their masters' consent, and that those who had gained a certain sum in trade might become free dwellers in towns. He also ordered that the sale of serfs be discouraged, and that when it did become necessary families should be sold as entireties, "without separating the husbands and their wives, the parents and the children, and no longer as heads of cattle."

The peasants, so far as they remained factors, were further favored by being ignored when the country was put under central control—a measure made necessary by the new theories of government and altered social conditions. The patriarchal and socialistic elements of the rural communes were not disturbed, because now no longer of significance,—the ancient eldership and *mir* being left with their administrative, police, and judicial functions, subject to the landed proprietors,—but above them a new system was inaugurated. The empire was divided into twelve provinces or governments (*gubernii*) subdivided into forty-three districts, but the subdivision of districts into communes and the latter into households while existing in fact were not specifically considered in the reorganization. The provinces were provided with governors and the districts with *voivodes*, both divisions being assisted by local boards known as *land-räthe*, organized on the model of the German Baltic cities except in that the members were elected only by the nobility. In each city the two *guilds* elected burgomasters, who with the president or mayor selected by them composed a *rathaus*, or mayor's court. All of these officials were made subject to a principal or central magistracy established at St. Petersburg.

The feeble point in all this system consisted in placing the functions of administration, police and justice, in one body, notwithstanding the power of appeal whereby judicial affairs could ultimately be brought before the section of justice of the Directing Senate. The difficulty was seen and partly avoided in the upper central administrative bodies, but in local institutions, which were based upon Swedish and German models, and entirely new to the people, to separate

the several functions would have required the knowledge of experts, who were not available. After sundry futile attempts all effort to do so was abandoned during Peter's reign.¹¹ To obviate the abuse of office and prevent failure of justice incident to the multiplicity of functions Peter borrowed another idea from Sweden and created the office of *fiscal* to exercise a secret surveillance over both administration and justice, to expose abuses, protect the *fisc*, and prosecute offenders. Fiscals were attached to all superior and inferior bodies, but the advantage they took of their opportunities to extort rewards for withholding denunciations led to their being replaced later by a procureur (*gubernski prokuror*) for each province and deputies (*striaptchii*) for districts to act openly for the prevention as well as punishment of abuses both administrative and judicial. These officers were under the direct authority of the Chief of the Judicial College. The appointment of the procureurs seems almost ironical in view of the institution of the "*Preobrajenski prikaz*," later known as the "Secret Chancery," where persons charged with *lèse majesté* were summarily tried *à huis clos* and frequently tortured into confession of crimes or indiscretions never committed. To ruin an enemy one had but to cry out "*slovo i dielo*" ("word and action"). Immediately denouncer and accused were hurried to the hall of interrogation at *Preobrajenski*, from which one was almost sure to issue only to be sent to Siberia or some distant prison or monastery. However, these contrasts were familiar incidents of the reign of Peter, in whom the blood of Asia and Europe seemed to maintain a constant struggle for supremacy. This is the only explanation of the occasional outbreaks which terrorized his entourage and recalled the days of Ivan the Terrible. They marked the whole period of his reign, having begun with the atrocious slaughter of the Streltzi and ended with the cowardly secret execution of his son Alexis.

¹¹ Jean Kapnist—*Code d'organisation judiciaire de 1864: Introduction*, lxxi.

In all this fever of iconoclasm and reconstruction it was inevitable that the Orthodox Church would not escape. Indeed, the first steps were taken shortly after Peter returned from his first foreign tour (1698), during which he had observed the subserviency of Church to State abroad. Upon the death of the Patriarch Adrian in 1700 no successor was appointed. Steven Yavorski, Archbishop of Novgorod, was given the title of "*Supervisor of the Patriarchal Throne.*"

In 1720 appeared the "*Ecclesiastical Regulations*" (*Dukovni Reglment*), at once an organic law and an administrative decree prepared by Feofan Prokopovitch, the Kiev churchman, whose erudition and progressiveness were strongly appreciated by his sovereign. This measure began the radical inroads upon the powers of the clergy, who were shortly to be practically eliminated from temporal affairs.

The "*Reglment*" had a material effect upon the subsequent development of civil and criminal law generally in that while the *Nomocanons* thereby ceased to appear as such in secular jurisprudence they became important historically as the only approach to scientific jurisprudence ever possessed by Russia. The ancient Eastern sources, however, were now forever obscured. "Après l'abolition partielle de la juridiction ecclésiastique et après la refonte de la législation criminelle, le droit romano-byzantin a perdu tout à coup son ancienne influence, et même ses traces finirent peu à peu par disparaître dans la législation du pays."¹²

In 1721 the office of Patriarch was formally abolished and the Church taken into the collegiate system by an edict creating the "*Holy Synod.*" That act contained the following characteristic preamble: "The collegiate organization will remove all fear of the troubles and seditions which are always possible when one man alone is at the head of the Church. The lower classes are unable to distinguish between the spiritual power and the imperial power: impressed by the virtue and the splendor which illuminate the

¹² R. de Hubé—*Droit Romain et Gréco-Byzantin chez les peuples slaves.*

supreme pastor of the Church, they imagine him to be a second sovereign, equal in power to the Autocrat and even superior to him. If disaccord occur between the Patriarch and the Tzar, they are disposed to array themselves on the side of the first, imagining that they thereby espouse the cause of God Himself."

The patriarchal powers were declared vested in the Holy Synod, which was composed of eight ancient metropolitans and archbishops. To represent the crown a procureur general (*ober-prokurer*) was named. He was the ministerial medium of communication with the body. The jurisdiction of the Church was limited to matters touching the validity and dissolution of marriage, the purity of religious institutions and Christian morals, the preservation of the holy relics and icons and their miraculous attributes, censorship over religious publications, and the promotion of religious instruction throughout the Empire. Internal disciplinary powers reaching to all ministers and servants of the Church corporation was also given—not, however, interfering with the internal government of the monastic order of St. Basil, the only Holy Order of Russia, nor in anywise curtailing the special corporative privileges of the five hundred and fifty-seven religious communities (monasteries and nunneries) then existing with their immense domains and thousands of serfs. While he conceived the idea of taking over the ecclesiastical revenues he did not go so far, although he did have a civilian committee investigate them.

Behold the sequel of the reforms of Nikon, the great scholar, prelate, and martyr. Under the strong hand of "the supreme defender and preserver of the dogmas of the dominant faith" the spiritual powers of the dual successor of imperial Byzantium and the "true Church" sank into an ostentatious and submissive instrument of secular autocracy and despotism. Yet it was progress—as was the avowed tolerance for dissenting sects and other faiths whereby the *Nevskoi Prospekt* received the name of "Toleration Street" from voyagers to St. Petersburg. Said Peter: "God has given to the Tzar powers over nations, but Christ alone has power over the conscience of men."

It is evident that this new Russia required broader substantive laws to regulate the civil relations of the people.

The *Ulozhenie* of 1649 was insufficient to meet existing conditions, as it was likewise inefficient even where applicable because of subsequent temporary, uncertain, and contradictory enactments. From the promulgation of that code to the accession of Peter and Ivan as joint sovereigns nine hundred public acts in the form of statute, edict, or manifesto had become effective. Outside the limited field of peasant customary law no general principles existed to assist the judicial officials. This inadequacy in the face of constantly arising new situations led to special and capricious legislation. Princess Dashkov in her *Recollections* said of Peter: "With regard to laws, this monarch, after setting aside the code of his forefathers, so often changed his own with no other view, sometimes, as it would seem, than to assert his right of doing so at pleasure, that they soon ceased to inspire reverence and consequently lost half their power."

Thus arose the veritable forum of chicanery wherein frequent and corrupt denials of justice were excused as honest mistakes in applying or interpreting statutes. In the provinces where "particular" laws and local customs were intended to be recognized still greater difficulties arose in enforcing the general legislative acts of the Empire. In the newly acquired territories, such as parts of Lithuania, Masovia, and Finland, and in the Ukraine (Little Russia) the confusion led to great wrongs and frequent complaints. It was manifest on the one hand that legislation could not remain stationary, and on the other that it would be impossible to construct a code *a priori*, involving, as it would, so many rights and relations founded upon customs and ancient statutes. Peter chose a middle ground. In 1700 he appointed what is known in the history of Russian law as the "First Code Commission," with instructions to take the *Ulozhenie* of 1649 as a base and by putting all subsequent legislation in harmony with its subjects, titles, and sections thus produce a complete, coherent, certain, and effective body of laws. Unfortunately, neither the mem-

bers of the Commission nor the secretaries were relieved of their other duties. Progress was slow, the work being badly directed and not urged. Up to 1703 the Commission had succeeded only in outlining a concordance between three chapters of the *Ulozhenie* and a part of the subsequent legislation. Nothing further was done, and without formal report or dissolution the Commission appears to have been forgotten in the absorbing military events of the time. The detailed labors and results of this Commission, fortunately, were preserved as valuable data for subsequent efforts, at the same time demonstrating the magnitude of the task. The efforts even to collect all the laws met with innumerable difficulties. The *prikazi* of former reigns had been conducted without definite methods, their records were in disorder, most of the acts were in manuscript, and if still in existence were held by the various governmental departments charged with their execution, as there had never been any general depository for conserving the laws. In 1714 by *ukase* all legislation subsequent to the *Ulozhenie not in accord with that code* was declared repealed. Peter sought thus to clear away some of the confusion. At once discussions arose as to which acts could properly come within that decree. To solve the question the Senate was directed to examine the laws and to add to the code those that harmonized with its provisions. This caused the Senate to appoint the "Second Code Commission," from the personelle of certain colleges of government supposed to be most qualified for the work. From 1714 to 1718 ten chapters were composed, but remained unrevised and unrecognized officially. They were added to the work of the First Commission and the whole became known as the "Code of Concordance" (*Svodnoie Ulozhenie*).

While these efforts were proceeding Peter was almost daily issuing his *ukase* to bridge some lagoon in former legislation or meet some demand of the new civil conditions. The most important step of this kind was the promulgation of his Military Code (*Voinskiï Ustav*) in 1716. It was in three parts: organization of the army, military criminal law, and law procedure. The last two parts he

extended to civilians and they were enforced in criminal practice for many years. This work was almost entirely of foreign source. The first two parts were translations of the military laws of 1621–32 of Gustavus Adolphus, some laws of the Emperor Leopold I, some others of King Christian of Denmark, and numerous *ordonnances* and edicts of French kings. The third section was prepared from the Russian standpoint and contained some elements drawn from ancient customs and the ecclesiastical procedure.

Many of the other special statutes or edicts issued from time to time left their mark as radical innovations. The right of primogeniture, absolutely antipathetic to Russian laws and traditions, was one of the most important modifications concerning real property. By this law (1715) real estate descended to the eldest son or to one other if the father so appointed and only the personal property passed to the other children. The inheritors of personalty could not convert it into realty until after seven years of military service, ten years of civil service, or fifteen years of some profession or commercial pursuit. The *ukase* abolishing the *pravege* (public whipping of debtors) removed an important remnant of Tartar rule. Written judicial procedure was introduced. Special tribunals of commerce were established in all the large cities. Many other laws of equal import were included in the two thousand nine hundred and ninety-five public acts of Peter during the twenty-nine years of his separate reign (after the death of Ivan in 1796). In most all of them foreign elements plainly appear—principally German and Scandinavian. This was probably because the Danish Code (*Danske Lov*) of 1683 and the Norwegian Code (*Norske Lov*) of 1687 were still in force in those countries and were considered of great perfection. Considerable influence was also exerted by the discussions of the Code Commission of Sweden, which was appointed in 1686 and was still at work throughout the reign of Peter. As a final effort to realize his wish to give Russia a complete and definite body of written laws, he decided in 1719 to abandon his former ideas and to reconstruct the *Ulozhenie* on the model of the Danish Code as modified by the Swedish Com-

mission, adding all subsisting subsequent legislation to the relevant titles. In 1719 he accordingly appointed the "Third Code Commission" and at the same time ordered the Senate to separately identify all future legislative acts as "provisory" or "permanent" and to keep each as a distinct collection. This injunction was obeyed only for the years 1719, 1720, and 1721, which gave little assistance to the new Commission. The obstacles which this body encountered will easily be imagined. According to the plan outlined it was necessary to translate a great mass of foreign laws and to collate such as might be needed. The diversity of languages, the lack of competent jurists (there being no legal profession), the radical differences among the systems, and particularly the imperfections and contradictions in the Russian collection,—still unarranged,—offered little opportunity for distinguishing with certainty what should be considered as *en vigueur* or regarded as repealed. With these difficulties the Commission made tardy progress and was still amid its perplexities when Peter died in 1725.

The great reformer rendered eminent services to his country. He raised Russia from the condition of an Asiatic Horde to that of a European State. Success attended all his efforts except, unfortunately, those directed towards providing commensurate private laws. Upon that point he left his country in a more unhappy state than his predecessors, for he had created new relations that required the support and encouragement of wise, just, and adequate legislation.

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